

March 12, 1997

Department of  
Toxic Substances  
Control

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Mr. Joseph Joyce  
BRAC Environmental Coordinator  
U.S. Marine Corps Air Station - El Toro  
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Pete Wilson  
Governor

James M. Strock  
Secretary for  
Environmental  
Protection

**DRAFT FINAL PHASE II FEASIBILITY STUDY REPORT FOR THE ORIGINAL  
LANDFILL, SITE 3, OPERABLE UNIT 2C, MARINE CORPS AIR STATION  
(MCAS) EL TORO**

Dear Mr. Joyce:

The California Environmental Protection Agency (Cal/EPA) has completed the review of the above subject document dated February 1997, prepared by Bechtel National, Inc. The report presents the results of a Feasibility Study (FS) conducted to identify and evaluate potential remedial action alternatives at Site 3, the Original Landfill. Site 3 is one of two sites in Operable Unit 2C for the MCAS El Toro.

We are unable to approve the document because you did not provide adequate responses to the comments we sent you on December 6, 1996. This letter is to transmit the enclosed Department of Toxic Substances Control (DTSC) and California Integrated Waste Management Board (CIWMB) comments dated March 10, 1997. Our primary concern is that the FS does not contain a clear description of the institutional controls for each alternative as described in the general comments. Also, the proposed institutional controls may not accommodate the Local Redevelopment Authority (LRA) reuse plan in the remedial analysis. Please note that the intent of institutional controls is to maintain the remedy so that it is protective of human health and the environment. This information is required so that the LRA, public, and regulators can fully evaluate the remedy for CERCLA compliance and compatibility with the reuse plan. DTSC will not approve the FS until the institutional controls proposed for each alternative are sufficiently described in enough detail for the public to understand the implications of such controls.

The Santa Ana Regional Water Quality Control Board has no comments on the document. Please provide revisions to the report addressing DTSC's and CIWMB's comments by April 14, 1997.



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If you have any questions or need clarifications, please call  
Mr. Tayseer Mahmoud at (562) 590-4891.

Sincerely,



John E. Scandura, Chief  
Southern California Operations  
Office of Military Facilities

Enclosures

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*Mr. Joseph Joyce*  
*March 12, 1997*  
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**DEPARTMENT OF TOXIC SUBSTANCES CONTROL**  
**Comments on**  
**Draft Final Phase II Feasibility Study Report (FS) for Site 3, OU-2C**  
**Marine Corps Air Station-EI Toro**  
**Dated February 1997**

The list of comments below were prepared by Mr. Tayseer Mahmoud, Remedial Project Manager, and Mr. Ronald Okuda, Environment Assessment and Reuse Specialist from the Department of Toxic Substances Control. The comments are directed to the Department of Navy and their consultants.

**GENERAL COMMENTS:**

The Navy has not adequately addressed DTSC's comments regarding institutional controls and the accommodation of the Local Redevelopment Authority (LRA) reuse plan in the remedial analysis. The Site 3 FS recommends institutional controls as a component for all remedial alternatives except alternative 1 (No Action). The intent of institutional controls is to maintain the remedy so that it is protective of human health and the environment. Institutional controls are also used to assure long-term permanence of the remedy. Since institutional controls are an instrumental part of the remedy, it is imperative that the FS contains a clear description of the institutional controls for each alternative. This information is required so that the LRA, public, and regulators can fully evaluate the remedy for CERCLA compliance and compatibility with the reuse plan.

DTSC does not agree with the revised explanation of institutional controls throughout the document. Deed restrictions should not be negotiated at the time of BRAC transfer, but discussed as early in the remedial evaluation process as possible. We acknowledge that in the CERCLA process, the specifics of institutional controls/deed restrictions may be finalized during the remedial design phase. This may include negotiations with the responsible party over who will maintain ownership of the land. However, in a BRAC closure, the military will not be the future property owner. The intent of the base closure laws is to rapidly make available closing bases for local redevelopment and job creation. Therefore, the LRA as either the transferee or the local entity created to plan the redevelopment of the base has to know the constraints of any future institutional controls. The FS, as written, fails to disclose this vital information for the reader to evaluate the protectiveness of the alternatives, the long-term permanence of the remedy and the compatibility with the future redevelopment.

SPECIFIC COMMENTS/ NAVY'S RESPONSE TO DTSC COMMENTS:

1. DTSC general comment number 2 was "Future Land Use: The draft Community Reuse Plan, dated August 1996, prepared by the MCAS El Toro Local Redevelopment Authority has listed the primary alternative for future redevelopment of the area where Site 3 is located as "R&D/Light Industrial/Institutional." The FS does not include a remedial action alternative(s) meets the intended future use of Site 3."

The Navy's response was "A discussion of the potential reuse of Site 3 and the impact of the proposed alternatives has been added to the FS."

DTSC disagrees that the FS has been modified to address the potential land use of Site 3. In December 1996, the MCAS El Toro Local Redevelopment Authority approved the reuse plan for MCAS El Toro. The reuse plan designated Site 3 as a R&D/Light Industrial/Industrial. Although the Navy was aware of the reuse plan, the draft final FS does not include or describe how any of the alternatives could coexist with the development of Site 3 for these reuse purposes. This is not consistent with DoN Environmental Policy Memorandum 95-02, which states in part, "It is DoN policy to ensure that remedies and cleanup levels . . . are consistent with approved community reuse plans." The FS needs to clearly evaluate and discuss whether each alternative will result in a remedy compatible with industrial use.

2. DTSC specific comment number 2 was "Section 3.4.5, Institutional Controls, page 3-19: This section states that "Access controls (e.g., fencing and signs) are expected to be necessary to assure the integrity of the landfill cover subsequent to the completion of closure." Please be advised that the draft Community Reuse Plan, dated August 1996 [Approved in December 1996], prepared by the MCAS El Toro Local Redevelopment Authority has listed the primary alternative for future redevelopment of the area where Site 3 is located as "R&D/Light Industrial/Institutional." Please evaluate the appropriate institutional controls for the intended use."

The Navy's response was "The discussion of access controls has been revised in light of the proposed reuse of Site 3. In particular, site access controls such as fencing will be commensurate with the reuse."

The draft final FS was revised to state that "restricting site access

commensurate with the planned reuse." This statement is vague and appears to conflict with the statement that "access controls (e.g., fencing and signs) are expected to be necessary to assure the integrity of the landfill cover." Also in Section 3.5.2.1, the text indicates that the most common type of fence to restrict access is an 8-foot-high chain link fence." Fencing Site 3 to restrict access is inconsistent with the reuse plan. The FS needs to clarify how fencing off the landfill will be compatible with an industrial use scenario.

The FS fails to mention that institutional controls will be required in the future to ensure that the area around the wells are kept unobstructed and access will be necessary to allow monitoring of landfill gas, leachate and groundwater.

3. DTSC specific comment number 3 was "Section 3.5.2.2. DEED RESTRICTIONS, page 3-24: The comment provided above (comment number 2) also applies here."

The Navy's response was "*The Department of Navy on deed restrictions requires that these types of restrictions to be negotiated at the time of BRAC transfer. Until that time the Base Master Plan will restrict land use and access.*"

The draft final FS fails to clearly describe the land use restrictions proposed for each alternative. DTSC disagrees with the statement that "Per DON policy, restrictions on land and groundwater use can only be negotiated in a BRAC transfer." This statement implies that institutional controls can be modified after the Record of Decision. Institutional controls/ land use restrictions are proposed as part of the remedy. If the restrictions are not described in the FS, what assurances does the public and regulators have that the "negotiated" restrictions will be protective of human health and the environment? The FS also does not state who will be negotiating the restrictions.

The statement also conflicts with DoN Environmental Policy Memorandum 95-02 which states that "if DoN proposes a cleanup which depends on land use restrictions to assure protection of human health and the environment, such restrictions and any appropriate institutional controls to establish and maintain the restrictions shall be discussed in the Feasibility Study, Proposed Plan, and the Record of Decision." The draft final FS does not contain sufficient information to evaluate what constraints the deed restrictions would have on the future development.

**OTHER COMMENTS:**

4. We could not find, in the tables or sections of Appendix A, responses to DTSC's submitted ARARS, Orange County Health Care Agency, and Orange County Fire Department ARARS. DTSC's submitted ARARS include Title 22, CCR 66264.14(a), 66264.19(a, c), 66264.51, 66264.52(b), 66264.97 to 100, and 66264.117(c, d, f).

5. Section A3.1, location Specific ARARS, page A3-1

Having a section similar to A3-1 on page A3-1 that lists the citations examined would be good for the other sections such as Chemical and Action Specific ARARS.

6. APPENDIX A, Action-Specific ARARS

The draft final FS has deleted the discussion of Land Use Restrictions from Appendix A (formerly Sections A4.1, A4.1.1, A4.1.2, A4.5 and A4.5.1) without providing the rationale. Institutional controls/deed restrictions will be requirements of the remedy if contaminants will be left in place after property transfer. Since the FS has proposed institutional controls as part of the remedy, land use restrictions should be discussed in this section.

7. Table A4-1, page A4-5

Please list the appropriate sections listed under 66264.111(c) that are relevant ARARS. Some sections listed in the table may not be appropriate.

8. Section A.4.2.2.1, page A4-53

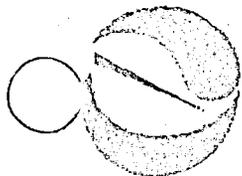
Convert the sentence "... did not commenced closure prior after the effective date ..." to read better.



Pete Wilson  
Governor

James M. Streck  
Secretary for  
Environmental  
Protection

MAR 10 1997



Cal/EPA

California  
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Mr. Tayseer Mahmoud  
California Environmental Protection Agency  
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Subject: Review of Revised Draft Phase II Feasibility Study Report and  
Related Documents for Operable Unit 2C - Site 3, Marine Corps  
Air Station, El Toro, California

Dear Mr. Mahmoud:

On February 18, 1997, California Integrated Waste Management Board  
(Board) Closure and Remediation Branch staff received a submittal addressing  
revisions to Draft Phase II Feasibility Study Report for Operable Unit 2C, Site  
3, Marine Corps Air Station (MCAS), El Toro. The submittal included the  
following documents:

- > Response to Comments, Draft Phase II Feasibility Study Report (FSR)  
for Operable Unit 2C - Site 3, MCAS El Toro, California; and
- > Draft Final Phase II Feasibility Study Report, Operable Unit 2C - Site 3,  
Marine Corps Air Station, El Toro, California, dated February 6, 1997.

Board Closure and Remediation staff have conducted an in-depth review of  
the aforementioned documents and compiled several comments. Please note  
that specific comments have numbers corresponding to those from the  
previous comment letters.

General Comment

Because it has been acknowledged that the postclosure land use for this site  
will be light industrial, Board staff will evaluate all available site investigation  
and feasibility study submittals in context of their relevance and compatibility  
with the proposed Site 3 reuse. This includes not only any already  
conducted or future investigation and design work but also methodology on  
which these activities have been based.



Comments on Draft FSR and Revised Draft FSR

General Comment

Because of a fairly specific postclosure land use proposed for Site 3 (light industrial with possible warehouse structures) and potentially very demanding postclosure maintenance resulting from it, all institutional controls (site security, access to monitoring points, restrictions on on-site development, and site maintenance), should be identified, established and integrated into the landfill closure and postclosure maintenance programs. Board staff do not find acceptable the approach taken in the FS to refer the institutional controls to a negotiation process during the base transfer. Both the design and operation of institutional controls should be derived in conjunction with landfill closure.

Specific Comments

In order to reduce the size of the Board staff review letter, the original Board staff comments are not cited in this portion of the review letter. Please refer to Board staff letter of December 2, 1996, to view the original comments.

1. Board staff have no comment.
2. After reviewing the revised FS, it does not appear that the proposed closure alternatives have been tailored specifically for a light industrial and warehouse use. The issue of surface integrity, its maintenance, and differential settlement reducing measures (important in an event of heavy surface loading from truck traffic and storage, and on-site structures) have not been addressed. Also, the matter of compatibility of each of the alternatives with on-site activities and repair of final cover have not addressed.
3. It is unclear how the waste quantity estimate was derived. Also, it is unclear how the percentage of hazardous waste vs. non-hazardous waste was estimated. While only partial site investigation information exists (especially limited beneath and within the waste pile), the estimated percentage of hazardous waste is 25 percent. This is not consistent with assumptions made at Site 5, where up to 50 percent of waste was assumed to be hazardous. Board staff request that the justifiable assumptions be provided for both the total and hazardous waste quantities.

Board staff are unclear about the accuracy of a clean closure alternative cost estimate. Because this alternative may be environmentally most beneficial and least limiting to postclosure land use, it is requested that the detailed clean closure analyses be conducted. The analyses should include justification for both assumptions and construction (excavation, hauling, etc.) costs for clean closure. It is recommended that clean closure costs acquired during clean closure projects at other military facilities in California be used for comparison.

4. Board staff have no comment.
5. Board staff disagrees that the annual postclosure maintenance costs should be based on a net present worth concept. Because of a large number of uncertainties associated with a landfill postclosure maintenance (in this case, further amplified by the proposed land use), discounting practice is generally discouraged in California (see attached excerpts from U.S. EPA Final Rule regarding Final Assurance Mechanism for Municipal Solid Waste Facilities [40 CFR Part 258]).
6. Board staff feel that at least basic soil loss calculations should be conducted at this time in order to verify the feasibility of installing a final cover instead of clean closure.
7. Board staff have no comment.
8. Board staff concur.
9. Because Site 3 will be used as a light industrial and warehouse location, any compatible final cover alternative (utilizing asphalt, concrete, GCL or FML materials) and no field waste characterization or vertical extent of waste studies have been conducted, a reinforcement layer (for example, geonet) would be required.
10. Board staff have no comment. However should a monolithic cover be proposed, an extra time allowance should be made for Board staff to review such proposal.
11. Response noted.
12. Board staff find the response acceptable.

Mr. Tayseer Mahmoud  
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13. Board staff find the response acceptable.
14. Board staff find the response acceptable.
15. Board staff find the response acceptable.

Should you have any questions regarding this matter, please call me at  
(916) 255-1195.

Sincerely,



Peter M. Janicki  
Closure and Remediation South  
Permitting and Enforcement Division

Enclosure

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Part II

Environmental Protection Agency

40 CFR Part 258

Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities; Final Rule

[[Page 60328]]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-5654-3]  
RIN 2050-AD04

Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** As part of the President's regulatory reform initiative, the Environmental Protection Agency (EPA) is amending the financial assurance provisions of the Municipal Solid Waste Landfill Criteria, under subtitle D of the Resource Conservation and Recovery Act. The financial assurance provisions require owners and operators of municipal solid waste landfills (MSWLFs) to demonstrate that adequate funds will be readily available for the costs of closure, post-closure care, and corrective action for known releases associated with their facilities. The existing regulations specify several mechanisms that owners and operators may use to make that demonstration. Today's rule increases the flexibility available to owners and operators by adding two mechanisms to those currently available. The additional mechanisms, a financial test for use by local government owners and operators, and a provision for local governments that wish to guarantee the costs for an owner or operator, are designed to be self-implementing. Use of the financial test provided in this rule allows a local government to use its financial strength to avoid incurring the expenses associated with the use of a third-party financial instrument. Demonstrating that the costs of closure, postclosure care, and corrective action for known releases are available protects the environment by assuring that landfills will be properly managed at the end of site life when revenues are no longer being generated and physical structures may begin to break down.

**DATES:** The effective date for this final rule is April 9, 1997. The compliance date for MSWLF's is April 9, 1997, except for small, dry or remote landfills which have until October 9, 1997 to comply.

**ADDRESSES:** Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, first Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-96-LGFF-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make

out that such practices are prohibited in many states.

Response: Today's rule maintains the local governments guarantee as proposed and does not restrict its use. As discussed above, EPA believes that a local government that meets the financial, public notice, and recordkeeping and reporting requirements of the financial test will be able to fund the assured MSWLF closure, post-closure care or corrective action obligations in a timely manner. A local government may, of course, only guarantee the closure, post-closure or corrective action costs of another MSWLF owner and operator, if such an arrangement is consistent with state law. Even if a local government guarantee is not precluded by state law, a state may nevertheless disallow the use of the guarantee if it determines that there is the potential for abuse.

Comment: Commenters suggested several clarifications to provisions of the proposed local government guarantee. Response: Today's rule clarifies that if a guarantee is cancelled, then pursuant to Sec. 258.74(h)(1)(iii) the owner or operator of the MSWLF must obtain alternate financial assurance within 120 days following "the guarantor's notice of cancellation" (not within 120 days following "the close of the guarantor's fiscal year"). Similarly, today's rule clarifies that if the local government guarantor no longer qualifies to use the financial test, then, pursuant to Sec. 258.74(h)(2)(iii), the owner or operator of the MSWLF must obtain alternate financial assurance within 90 days following "the determination that the guarantor no longer meets the requirements of paragraph (f)(1) of this section"; not within 90 days following "the guarantor's notice of cancellation."

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### C. Discounting of Costs in Calculating Financial Assurance Cost Estimates

The financial assurance requirements under RCRA subtitle D currently require owners and operators to calculate cost estimates in current dollars, and aggregate these estimates (even though these costs may be incurred many years in the future). Owners must obtain a financial responsibility instrument for at least the amount of this aggregated cost estimate. In the preamble to the December 27, 1993 proposed rule (58 FR 68353, 68361), EPA solicited comments on whether MSWLF owners and operators should be allowed to use a present value based on a discount rate to estimate certain financial assurance costs. Cost discounting would allow owners and operators to adjust an aggregated cost estimate to reflect the fact that activities are scheduled to occur in the future and to obtain a financial instrument for less than the aggregate costs (i.e. the "present value" of the aggregated costs). (See Comment Response Document, Section 7) Comment: A number of commenters opposed allowing MSWLF owners and operators to discount financial assurance costs because of their belief that landfill owners and operators often underestimate cost estimates and that the timing of a closure event is uncertain. One commenter suggested that the risks of discounting could be minimized with State oversight if EPA provided specific guidelines. Response: The Financial Accounting Standards Board (which sets standards for corporate accounting) allows discounting only when costs and timing of closure are certain and then only for an essentially risk free rate, adjusted for inflation. The Agency agrees with commenters that cost estimates are frequently underestimated and that the closure date is usually uncertain because sites may fill up more quickly than expected or they may close because of enforcement actions as a result of rule violations. We also agree with the Financial Accounting Standards Board that discounting is only appropriate when cost estimates and closure dates are certain. For these reasons, the Agency has decided against allowing discounting without State oversight. Because the Agency recognizes that there are cases where cost estimates are accurate and closure dates are certain, we have decided to allow State Directors to allow discounting for closure, postclosure, and corrective action costs if they believe that cost estimates are accurate and the closure date is certain and where the local government has submitted a finding from a Registered Professional Engineer that cost estimates are accurate and certifies that there are no known factors which would change the estimated closure date. The State must also determine that the facility is in compliance with all regulations it determines to be applicable and appropriate. Consistent with other elements of this rule, cost estimates must be adjusted annually to reflect inflation and remaining site life. The discount rate used may not be greater than the rate of return for essentially risk free investments, such as 1 year Treasury bills, net of inflation. As noted above, discounting at an essentially risk free rate of return is that allowed by the Financial Accounting Standards Board and was requested by several commenters. The Government Accounting Standards Board notes that EPA is already allowing for discounting for inflation because it allows annual adjustments of cost estimates for inflation. For this reason the Agency requires that inflation be deducted from an essentially risk free rate